



STATE BOARD OF EQUALIZATION

October 14, 1969

Attention:

Gentlemen:

This is in response to your letter of May 8, 1969, and your supplementary letter of October 3, 1969 in which you request our opinion on the sales tax consequences of certain purchases of tangible personal property made by the California _____ for use in the conduct of scientific research or the United States Government.

The personal property here involved does not include "supplies and materials allocated to overhead costs" as that term is used in Sales Tax General Bulletin 59-9, nor is such property used "in the performance of contracts with the United States for the construction of improvements on or to real property in this state", as that term is used in Section 6384 of the Revenue and Taxation Code. Rather, the personal property in question consists of items of equipment to be used in a specific project identifiable in terms of that project.

Your question relates solely to the effect on the present situation of the Department of Defense Regulation ASPR 4-116, governing property clauses to be inserted in contracts with nonprofit institutions of higher education carrying on scientific research with funds made available for grants or contracts for the conduct of basic or applied research.

In the past, contracts between the U. S. Government and _____ have recognized that _____ could itself make purchases of necessary property to use in performing the contracts, and have provided that title to such property would vest in the U. S. Government. The specific general title provisions are as stated in Section 13-707(c) of the ASPR regulations. Where these title provisions are operative, the sales tax treatment of purchases by _____ from vendors of property for use on contracts of the type here discussed is clear. _____ gives its vendor a resale certificate since, in essence, there is a resale to the United States. And the subsequent sale to the U. S. is exempt from tax under Section 6381 of the code.

The U. S. Government has promulgated new regulations covering title to equipment purchased by nonprofit educational or research institutions in fulfilling government contracts of the type here involved. These regulations implement 42 U.S.C. §1892 which provides that:

"Authority to make grants or contracts for the conduct of basic or applied scientific research at nonprofit institutions of higher education, or at nonprofit organizations whose primary purpose is the conduct of scientific research, shall include discretionary authority, where it is deemed to be in

furtherance of the objectives of the agency, to vest in such institutions or organizations, without further obligation to the Government, or on such other terms and conditions as the agency deems appropriate, title to equipment purchased with such grant or contract funds. Pub.L. 85-934, §2, Sept. 6, 1958, 72 Stat. 1793."

ASPR 4-116.4(b) states that the general purpose of the regulations is to facilitate the scientific research performed by nonprofit institutions and organizations specified in the regulation. More specifically, the regulations are intended to eliminate unnecessary and wasteful government record keeping with respect to items of small value. The government has found it impracticable and uneconomical to retain title to minor items of equipment, and the new provisions are designed to effect government economy and increase administrative flexibility where research effectiveness requires, in the eyes of the government, transfer of title to the nonprofit contractor. The regulations will have no effect on the purchase of relevant supplies and materials.

Pursuant to ASPR regulation 13-707, title to all property acquired under a cost-reimbursement type contract will continue to pass to the U. S. Government prior to its use in fulfilling the contract.

ASPR 4-116.4(c)(1) provides with respect to low-cost items of equipment that:

"Contracts with nonprofit institutions of higher education or nonprofit organizations whose primary purpose is the conduct of scientific research, shall provide, or shall be amended to provide, for transfer to contractors of title to each item of equipment having an acquisition cost of less than \$200 and purchased with funds available for grants or contracts for the conduct of basic or applied research. With respect to such equipment already in possession of such contractors, the contracting officer shall vest in the contractor title to all such low cost equipment at the time of amendment of the appropriate contract or as soon as practicable thereafter. With respect to such equipment to be acquired by the contractor for the account of the Government the contracting officer shall vest in the contractor title to such equipment upon receiving from the contractor a written receipt. The requirements of this paragraph are not applicable to transfers of title that are precluded by controls governing the equipment involved."

We understand that Defense Procurement Circular No. 64, dated October 28, 1968, carries the language of a memorandum from the Assistant Secretary of Defense (Installations and Logistics) stating that the treatment outlined above for items of equipment having an acquisition cost of less than \$200 is to be extended to items costing less than \$1,000.

ASPR 4-116.4(c)(4) provides that:

"Where title to equipment is vested pursuant to [(c)(1)], the contractor shall be without further obligation to the Government with respect to such equipment, except that the contractor must agree, as a condition to taking title, that no charge will be made to the Government for any depreciation,

amortization, or use charge with respect to such equipment under any existing or future Government contract."

Where it is expected that in connection with a contract, title to equipment may be vested in the contractor in accordance with the provisions of paragraph 4-116, the addition to subparagraph (c)(1) of the clause in ASPR 13-707 is to be included in cost-reimbursement contracts. That addition provides:

"Notwithstanding the provisions of this subparagraph (c) (1) relative to title, the Contracting Officer may at any time during the term of this contract, or upon completion or termination, transfer title to equipment to the Contractor upon such terms and conditions as may be agreed upon; provided, that the Contractor shall not under any Government contract, or subcontract thereunder, charge for any depreciation, amortization or use of such equipment as is donated under this paragraph. Upon the transfer of title to equipment under this paragraph, such equipment shall cease to be Government property."

Since title to all property of a value subject to the provisions of ASPR 4-116.4(c)(1) and Defense Procurement Circular No. 64 continues to pass to the U. S. Government prior to use and since the subsequent transfer of the title to such property to _____ without consideration is not a transaction itself subject to sales or use tax, you are led to conclude that the subsequent transfer does not affect the tax-exempt character of the original sale to the U. S. In effect, you state, the proposed regulation concerns only bookkeeping and administrative relations of the parties. You thus seek confirmation of your conclusion that use of contract clauses in consonance with Regulation 4-116.4 and Regulation 13-707 will not affect the nontaxable nature of purchases of equipment under \$1,000, title to which is passed back to _____ pursuant to ASPR 4-116.4(c)(1).

Upon due consideration, we agree with your analysis. Since title to property subject to the provisions of paragraphs 4-116 and 13-707 passes directly to the government, and since the contract clause operative under the regulations provides only that the Contracting Officer may transfer title to such property upon such terms and conditions as may be agreed upon, the initial sale to the government cannot be characterized, for sales and use tax purposes, as a sale to the contractor.

Your patience in this matter has been appreciated.

Very truly yours,

Gary J. Jugum
Assistant Tax Counsel

GJJ:vs